

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned on Briefs June 21, 2023

FILED

07/20/2023

Clerk of the  
Appellate Courts

**MILBURN L. EDWARDS v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Wayne County  
No. 17190 Christopher V. Sockwell, Judge**

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**No. M2022-01416-CCA-R3-HC**

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Petitioner, Milburn L. Edwards, appeals from the Wayne County Circuit Court's order summarily dismissing his ninth petition for writ of habeas corpus. On appeal, Petitioner argues the habeas corpus court's order failed to include adequate findings of fact and conclusions of law, the State's answer to the habeas corpus petition was insufficient, and the Warden of Petitioner's penitentiary was not served with process. After review, we affirm the judgment of the habeas corpus court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

MATTHEW J. WILSON, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., and KYLE A. HIXSON, J., joined.

Milburn L. Edwards, Clifton, Tennessee, Pro Se.

Jonathan Skrmetti, Attorney General and Reporter; and Benjamin A. Ball, Senior Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

I. Background

In 1992, a Davidson County jury convicted Petitioner of twenty-one counts of rape (involving five victims), two counts of first degree burglary, two counts of aggravated burglary, one count of second degree burglary, one count of aggravated rape, and one count of assault with intent to commit rape and robbery. The trial court sentenced Petitioner to an effective term of life plus 415 years in the Department of Correction. On appeal, this court affirmed Petitioner's convictions but modified his sentence to a term of life plus 195 years. *State v. Edwards*, 868 S.W.2d 682, 705 (Tenn. Crim. App. 1993).

Petitioner subsequently filed a petition for post-conviction relief. The post-conviction court denied relief, and this court affirmed the post-conviction court's order on appeal. *See Edwards v. State*, No. M2002-02124-CCA-R3-PC, 2003 WL 23014683 (Tenn. Crim. App. Dec. 15, 2003).

Petitioner has filed eight previous petitions for writs of habeas corpus. All were dismissed by the trial court. Petitioner's most recent petition (before the current petition) was dismissed by the habeas corpus court, and this court dismissed Petitioner's appeal of that ruling as untimely. *Edwards v. Perry, Warden*, No. M2021-01428-CCA-MR3-CD (Tenn. Crim. App. Dec. 16, 2021). In Petitioner's other habeas corpus cases, the appeals were timely, and in each instance this court affirmed the habeas corpus court's dismissal of the petition. *See Edwards v. State*, No. M2018-01300-CCA-R3-HC, 2019 WL 2591304 (Tenn. Crim. App. June 25, 2019); *Edwards v. State*, No. M2012-01492-CCA-R3-HC, 2013 WL 1182993 (Tenn. Crim. App. Mar. 21, 2013); *Edwards v. Lindamood, Warden*, No. M2010-02352-CCA-R3-HC, 2012 WL 2564379 (Tenn. Crim. App. July 3, 2012); *Edwards v. State*, No. M2010-02001-CCA-R3-HC, 2011 WL 3480994 (Tenn. Crim. App. Aug. 5, 2011); *Edwards v. Lindamood, Warden*, No. M2009-01132-CCA-R3-HC, 2010 WL 2134156 (Tenn. Crim. App. May 27, 2010); *Edwards v. Lindamood, Warden*, No. M2006-01092-CCA-R3-HC, 2007 WL 152233 (Tenn. Crim. App. Jan. 17, 2007); *Edwards v. State*, No. M2004-01378-CCA-R3-HC, 2005 WL 544714 (Tenn. Crim. App. Mar. 7, 2005).

Petitioner filed for habeas corpus relief a ninth time on July 18, 2022. In that petition, he alleged his judgments of conviction were void because the judgments were not file-stamped by the criminal court clerk, the judgments did not comport with the requirements of Rule 32(e)(1) of the Tennessee Rules of Criminal Procedure, some judgments did not state where Petitioner was to serve his sentence, and the trial judge did not sign the judgment forms. In Petitioner's view, these deficiencies meant that "the judgments of convictions never became final and the life plus 195[-] year sentence that the petitioner received never commenced," rendering his "ongoing incarceration in the custody of the Tennessee Department of Correction unlawful and illegal."

On August 26, 2022, the State, through the Attorney General, moved to dismiss Petitioner's current habeas corpus petition. In its motion, the State observed that Petitioner's seventh and eighth habeas corpus petitions also asserted that his judgments were void because the judgments did not bear a file-stamp date. The State asserted that the trial court dismissed these claims previously and cited this court's opinion which addressed Petitioner's seventh habeas corpus petition and found the file-date issue to be without merit. *See Edwards v. State*, 2019 WL 2591304, at \*3. The State argued Petitioner's other

assertions were not supported by the evidence or cognizable in a claim for habeas corpus relief.

On September 22, 2022, the habeas corpus court filed a written order dismissing Petitioner's application for habeas corpus relief. This timely appeal follows.

## II. Analysis

On appeal, Petitioner does not raise the same issues he asserted in the July 18, 2022 habeas corpus petition. Rather, Petitioner contends the trial court's order summarily dismissing the case was inadequate because it did not contain sufficient findings of fact and conclusions of law, the State's response to the habeas corpus petition failed to comply with the statutory provisions of Tennessee Code Annotated section 29-21-116(B)(1)-(3), and the Warden of South Central Correctional Facility, where Petitioner is incarcerated, was not served with process. The State contends Petitioner's issues on appeal are not cognizable grounds for habeas corpus relief. As examined below, we agree with the State.

### A. Standard of Review

"The determination of whether habeas corpus relief should be granted is a question of law." *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). "Therefore, our standard of review is de novo with no presumption of correctness". *Id.* (citing *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 408 (Tenn. 2006)). The habeas petitioner bears the burden "to show by a preponderance of the evidence that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 1998). The trial court may dismiss a habeas corpus petition without a hearing if the petition fails to establish the challenged judgment is void. Tenn. Code Ann. § 29-21-109; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

The right to seek habeas corpus relief is guaranteed by Article I, section 15 of the Tennessee Constitution, but the ability to seek habeas corpus relief is regulated by statute. *See* Tenn. Code Ann. § 29-21-101. The Tennessee Supreme Court has observed:

The grounds upon which habeas corpus relief is warranted are narrow. The writ will issue only when it appears on the face of the judgment or the record of the proceedings upon which the judgment is rendered that a court lacked jurisdiction or authority to sentence a defendant or that the sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). A habeas corpus petition may be used to challenge judgments that are void and not merely voidable. *Id.*; *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999).

*Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000).

“An illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time.” *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (citing *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978)). Conversely, a voidable judgment or sentence “is one which is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity.” *Taylor*, 995 S.W.2d at 83 (citations omitted); see *Summers v. State*, 212 S.W.3d 251, 256 (Tenn. 2007).

#### B. Adequacy of Habeas Corpus Court’s Order Dismissing Petition

First, Petitioner asserts the habeas corpus court’s order summarily dismissing the petition did not contain adequate findings of fact and conclusions of law. The State contends the court properly dismissed the petition without a hearing because the petition failed to state a cognizable claim for habeas corpus relief.

Summary dismissal of a habeas corpus petition “is proper only where the petition fails to state a cognizable claim for habeas corpus relief.” *Bowen v. Carlton, Warden*, No. E2007-01845-CCA-R3-HC, 2008 WL 450630, at \*3 (Tenn. Crim. App. Feb. 20, 2008); see Tenn. Code Ann. § 29-21-109. Thus, although on appeal Petitioner has not addressed the issues he raised in the habeas corpus court, we must review those issues to determine whether the habeas corpus court’s summary dismissal was proper.

In the court below, Petitioner contended the judgments in this case contravened Rule 32(e)(1) of the Tennessee Rules of Criminal Procedure, which states, “[a] judgment of conviction shall be signed by the judge and entered by the clerk.” This matter has already been settled. As stated above, this court previously determined Petitioner’s argument that his judgments did not contain a file-stamp date were void was without merit. See *Edwards v. State*, 2019 WL 2591304, at \*3. Regarding Petitioner’s argument that the trial judge did not sign the judgment forms, this court has concluded, “we do not believe that the failure of the judgments or minutes to contain a handwritten signature of the trial judge shows that the trial court was without jurisdiction to sentence the petitioner.” *Robinson v. State*, No. E1999-00945-CCA-R3-PC, 2000 WL 1228023, at \*2 (Tenn. Crim. App. Aug. 30, 2000). Furthermore, the only judgment forms in the record of this case bear the trial judge’s signature.

Petitioner also asserted that the judgments were void because the trial judge did not orally announce that Petitioner was being sentenced to confinement in the Department of Correction. However, Petitioner did not identify any authority standing for this proposition. Petitioner cited to several opinions in his habeas corpus petition which he claimed supported his arguments, but the cited cases were unavailing to his position.

In sum, none of the issues stated in the habeas petition entitled Petitioner to relief. “A trial court is not required, as a matter of law, to grant the writ or conduct an inquiry into the allegations contained in the petition if the petitioner fails to state a cognizable claim for relief.” *State v. Hicks*, No. M2006-01640-CCA-R3-PC,<sup>1</sup> 2007 WL 1790446, at \*2 (Tenn. Crim. App. June 21, 2007) (citing Tenn. Code Ann. § 29-21-109). Thus, the habeas court properly dismissed the petition without a hearing.

### C. State’s Answer to Petition and Lack of Service

Petitioner claims he is entitled to relief because the State’s response to his petition did not comply with Tennessee Code Annotated section 29-21-116, and he also claims the Warden was not served with process.<sup>2</sup>

Specifically, Petitioner argues the State did not comply with the provisions of Tennessee Code Annotated section 29-21-116, which states:

(a) Service being made in any of the modes provided for in this part, the defendant shall appear at the proper time, and make due return of the writ, and answer the petition, if required.

(b) The person served with the writ shall state in the return, plainly and unequivocally:

(1) Whether the person then has, or at any time has had, the plaintiff in the person’s control or restraint, and, if so, the authority and cause thereof, setting out the same fully;

(2) If the party is detained under a writ, warrant, or other written authority, a copy thereof shall be annexed to the return,

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<sup>1</sup> Despite the style of the case and the appellate court case number suggesting otherwise, *Hicks* dealt with a petitioner’s appeal from the dismissal of a habeas corpus petition.

<sup>2</sup> Petitioner did not raise these issues in the court below. “It is well-settled that a [petitioner] may not advocate a different or novel position on appeal.” *State v. Howard*, 504 S.W.3d 260, 277 (Tenn. 2016). “Issues raised for the first time on appeal are considered waived.” *State v. Johnson*, 970 S.W.2d 500, 508 (Tenn. Crim. App. 1996). The State did not address waiver on appeal, however, so we will briefly address these issues on the merits.

and the original shall be produced and exhibited to the court or judge, if required; and

(3) If the person on whom the writ has been served, has had the plaintiff in the person's custody or power or under the person's restraint, at any time before or after the date of the writ, but has transferred the plaintiff to another person, that person shall state the facts explicitly, and to whom, at what time, for what cause, and by what authority such transfer was made.

(c) The return shall be signed by the person making it, and verified by the oath; unless the person is a sworn public officer, and makes the return in an official capacity.

However, this court has observed:

[S]ection 29-21-116 "only applies after a writ of habeas corpus has been issued by the lower court. Section 29-21-116 does not apply in situations, like this case, where the habeas corpus court has summarily dismissed the petition for failure to present a cognizable claim for habeas corpus relief."

*Johnson v. State*, No. M2013-00965-CCA-R3-HC, 2013 WL 6164081, at \*3 (Tenn. Crim. App. Nov. 21, 2013) (quoting *Douglas v. Easterling, Warden*, No. W2010-00382-CCA-R3-HC, 2010 WL 5549052, at \*3 (Tenn. Crim. App. Dec. 29, 2010)). Here, the State filed a motion to dismiss, and the habeas corpus court granted the motion. No writ of habeas corpus was issued. Because a writ of habeas corpus did not issue, the State and the Warden were not required to follow the procedures of section 29-21-116. Therefore, this issue is not cognizable for habeas corpus relief.

Accordingly, we conclude these two issues do not entitle Petitioner to relief.

#### IV. Conclusion

For the reasons stated above, we affirm the judgment of the habeas corpus court dismissing the petition for habeas corpus relief.

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MATTHEW J. WILSON, JUDGE